

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

AUG 30 2018

CONTINENTAL VINEYARDS, LLC and
INDECK-PASO ROBLES, LLC,

Plaintiffs,

v.

VINIFERA WINE Co., LLC and
RANDY DZIERZAWSKI,

Defendants.

Judge Thomas M. Durkin
United States District Court

No. 12 C 3375

Honorable Thomas M. Durkin

FINAL JURY INSTRUCTIONS

August 30, 2018

FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, during the trial you have seen and heard all the evidence and arguments of the attorneys. I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

ALL LITIGANTS EQUAL BEFORE THE LAW

In this case the plaintiffs and one of the defendants are companies. All parties are equal before the law. A company is entitled to the same fair consideration that you would give any individual person.

MULTIPLE CLAIMS AND DEFENDANTS

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, the other is also liable.

EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

WHAT IS NOT EVIDENCE

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or strike any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may see or hear. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

DEMONSTRATIVE EXHIBITS

Certain demonstrative videos, timelines, and diagrams have been shown to you. Those videos, timelines, and diagrams are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts. They will not be given to you to take back to the jury room when you deliberate.

NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I asked some witnesses questions myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

DEPOSITION TESTIMONY

During the trial, certain testimony was presented to you by the reading of a deposition transcript or playing a video of a deposition. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

PRIOR INCONSISTENT STATEMENTS

You may consider statements given by a party or witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement that is inconsistent with his testimony here in court, you may consider the earlier statement only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial or in preparation for a deposition.

NOTE-TAKING

Any notes you took during this trial are only aids to your memory. The notes are not evidence. If you did not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony. You will not have the opportunity to review any portions of the trial transcript during your deliberations.

WEIGHING THE EVIDENCE

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life. In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

CONSIDERATION OF ALL EVIDENCE

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

TESTIMONY OF WITNESSES

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

IMPEACHMENT OF WITNESS - CONVICTION

You heard evidence that Randy Dzierzawski has been convicted of a crime. The conviction does not relate to any of the allegations in this case. You may consider this evidence only in deciding whether Randy Dzierzawski's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

NUMBER OF WITNESSES

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a large number. You need not accept the testimony of the larger number of witnesses.

OPINION TESTIMONY

You heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

BURDEN OF PROOF

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

CLAIMS IN THE CASE

Plaintiffs make the following claims against Defendants:

- (1) breach of the fiduciary duty of loyalty, including (a) failure to act in good faith, and (b) self-dealing against Defendant Randy Dzierzawski;
- (2) aiding and abetting breach of the fiduciary duty of loyalty against Defendant Vinifera Wine Co., LLC;
- (3) unfair competition against both Defendants; and
- (4) unjust enrichment against both Defendants.

Defendants deny liability on all claims.

I will now instruct you on how to decide each claim.

BREACH OF FIDUCIARY DUTY OF LOYALTY

Plaintiffs claim that Randy Dzierzawski breached his fiduciary duty of loyalty. Officers of a company owe a fiduciary duty of loyalty to the company. This means that officers are not permitted to use their position of trust and confidence to further their private interests. The fiduciary duty of loyalty requires a company's officers to put the company's best interests before their own interests.

The fiduciary duty of loyalty requires officers to provide an undivided and unselfish loyalty to the company, and prohibits conflict between the officer's duty to the company and their own self-interest.

This case involves two ways an officer can be alleged to have breached the fiduciary duty of loyalty: (A) by failing to act in good faith, or (B) by engaging in self-dealing.

(A) The fiduciary duty of loyalty requires officers to act in good faith towards the company. Good faith requires that officers must act in the best interests of the company. Good faith also requires that officers must not only protect the interests of the company, but also must refrain from doing anything that would injure the company, or deprive it of profits that the officer, through his or her skill and ability, may properly bring to the company. Good faith additionally requires that a company's officers not act with conscious disregard for the duties they owe to the company.

(B) The fiduciary duty of loyalty also prohibits officers from engaging in self-dealing, by entering into transactions in which they appear on both sides of the agreement, unless that officer establishes the "entire fairness" of each transaction.

BREACH OF FIDUCIARY DUTY OF LOYALTY:
FAILURE TO ACT IN GOOD FAITH

Plaintiffs claim that Defendant Randy Dzierzawski breached his fiduciary duty of loyalty by failing to act in good faith. To succeed on this claim, Plaintiffs must prove the following by a preponderance of the evidence:

- (1) Randy Dzierzawski owed a fiduciary duty of loyalty to either or both Plaintiffs; and
- (2) Randy Dzierzawski:
 - (a) failed to act in the best interests of either or both Plaintiffs; or
 - (b) injured either or both Plaintiffs; or
 - (c) deprived either or both Plaintiffs of profits; or
 - (d) consciously disregarded his obligations to either or both Plaintiffs.

If you find that Plaintiffs have proven the first element and any part of the second element with regard to any transaction, then you must find for the Plaintiffs as to this claim with regard to that particular transaction.

If you find that Plaintiffs have not proven the first element, or have proven the first element and have not proven any part of the second element, then you must find for Defendants on this claim.

BREACH OF FIDUCIARY DUTY OF LOYALTY:
SELF-DEALING

Plaintiffs claim that Defendant Randy Dzierzawski breached his fiduciary duty of loyalty by engaging in self-dealing. To succeed on this claim, Plaintiffs must prove the following by a preponderance of the evidence with regard to any transaction Plaintiffs claim constitutes self-dealing:

- (1) Randy Dzierzawski owed a fiduciary duty of loyalty to either or both Plaintiffs; and
- (2) Randy Dzierzawski appeared on both sides of the transactions between either or both Plaintiffs and Vinifera.

If you find that Plaintiffs have not proven the above two elements with regard to the transaction at issue, then you must find for Defendants on this claim with regard to that particular transaction.

If you find that Plaintiffs have proven the above two elements with regard to any transaction, Randy Dzierzawski then must prove the “entire fairness” of each such transaction.

BREACH OF FIDUCIARY DUTY OF LOYALTY:
SELF-DEALING
ENTIRE FAIRNESS

To prove “entire fairness” Defendant Randy Dzierzawski must prove the following by a preponderance of the evidence:

- (1) Randy Dzierzawski entered into the transactions with “fair dealing”; and
- (2) Randy Dzierzawski obtained a “fair price” for the transactions.

Factors relevant to whether Randy Dzierzawski entered into the transactions with “fair dealing” include the timing of the transactions, how they were initiated, structured, negotiated, disclosed, and how approval was obtained; but Randy Dzierzawski does not have to prove all of these factors.

Whether Randy Dzierzawski obtained a “fair price” for the transactions is determined by examining the economic and financial considerations of the transactions.

If you find that Randy Dzierzawski has proven entire fairness with regard to the transaction at issue, then you must find in favor of Randy Dzierzawski on this claim with regard to that particular transaction.

If you find that Randy Dzierzawski has not proven entire fairness with regard to the transaction at issue, then you must consider whether the “Acquiescence Defense” applies to that particular transaction.

BREACH OF FIDUCIARY DUTY OF LOYALTY:
SELF-DEALING
ACQUIESCENCE DEFENSE

Even if you find that Plaintiffs have proven that Defendant Randy Dzierzawski engaged in self-dealing, and that Randy Dzierzawski failed to prove the entire fairness of a particular transaction, he may also prove that the “Acquiescence Defense” applies to that transaction.

To succeed with this defense, Randy Dzierzawski must prove by a preponderance of the evidence that with regard to each challenged transaction, Plaintiffs:

- (1) had full knowledge of the transaction; and
- (2) never objected to the transaction; and
- (3) accepted a benefit from the transaction; and
- (4) acted in some other manner inconsistent with challenging the transaction.

If you find that Plaintiffs have proven that Defendant Randy Dzierzawski engaged in self-dealing, that Randy Dzierzawski failed to prove the entire fairness of a particular transaction, and that Randy Dzierzawski has not proven that the Acquiescence Defense applies to a particular transaction, then you must find in favor of Plaintiffs on this claim with regard to that particular transaction.

If you find that Randy Dzierzawski has proven that the Acquiescence Defense applies to a particular transaction, then you must find in his favor on this claim with regard to that particular transaction.

BREACH OF FIDUCIARY DUTY OF LOYALTY:
AIDING AND ABETTING

Plaintiffs claim that Defendant Vinifera Wine Co., LLC aided and abetted Defendant Randy Dzierzawski in breaching his fiduciary duty of loyalty. To succeed on this claim, Plaintiffs must prove the following by a preponderance of the evidence:

- (1) Randy Dzierzawski owed a fiduciary duty of loyalty to either or both Plaintiffs;
- (2) Randy Dzierzawski breached his fiduciary duty of loyalty to either or both Plaintiffs;
- (3) Vinifera participated in Randy Dzierzawski's conduct with the knowledge that his conduct constituted a breach of the fiduciary of loyalty; and
- (4) Randy Dzierzawski's breach of the fiduciary duty of loyalty "proximately caused" damages to either or both Plaintiffs.

I will define "proximate cause" for you shortly.

If you find that Plaintiffs have proven the above four elements, then you must find for the Plaintiffs as to this claim.

If you find that Plaintiffs have not proven the above four elements, then you must find for Defendants on this claim.

UNFAIR COMPETITION

Plaintiffs claim that the Defendants Randy Dzierzawski and Vinifera Wine Co., LLC engaged in unfair competition. To succeed on this claim, Plaintiffs must prove the following by a preponderance of the evidence:

- (1) either or both Plaintiffs were in competition with Vinifera;
- (2) either or both Defendants intended to confuse the public by passing off Vinifera's products or labels or other identifying marks as if they were the products or labels or other identifying marks of either or both Plaintiffs;
- (3) there was a "likelihood of confusion" by the public between either or both Plaintiffs' products and Vinifera's products; and
- (4) either or both Plaintiffs were injured by either or both Defendants' acts.

In proving that a "likelihood of confusion" existed, Plaintiffs do not need to prove that anyone was actually confused, but only that confusion would probably occur because of either or both Defendants' actions.

In determining whether a "likelihood of confusion" existed, you may consider factors such as:

- (a) strength of a Plaintiff's products or labels or other identifying marks;
- (b) relatedness of the goods at issue;
- (c) similarity of the two products or labels or other identifying marks at issue;
- (d) any evidence of consumer's actual confusion;
- (e) marketing channels used to promote both products;
- (f) the degree of care purchasers of the wine products at issue would likely exercise in selecting the product;

(g) the Defendants' intent in selecting Vinifera's products or labels or other identifying marks; or

(h) the likelihood that a Plaintiff would expand into the product lines at issue.

Not all these factors necessarily will be helpful in determining the "likelihood of confusion" in this case, nor are they the only factors that you may consider in determining this issue.

If you find that Plaintiffs have proven the above four elements, then you must find for the Plaintiffs as to this claim.

If you find that Plaintiffs have not proven the above four elements, then you must find for Defendants on this claim.

UNJUST ENRICHMENT

Plaintiffs claim that Defendants Randy Dzierzawski and Vinifera Wine Co. LLC were unjustly enriched by their conduct. To succeed under this claim, Plaintiffs must prove the following:

(1) either or both Defendants received a benefit from either or both Plaintiffs;

and

(2) under the circumstances, it would not be fair or equitable to either or both

Plaintiffs for the Defendants to retain the benefit.

If you find that Plaintiffs have proven the above two elements, then you must find for the Plaintiffs as to this claim.

If you find that Plaintiffs have not proven the above two elements, then you must find for Defendants on this claim.

PROXIMATE CAUSE

Some of the causes of action involved in this case require you to find that Defendants' actions proximately caused Plaintiffs' injuries. "Proximate cause" is a cause that directly produces the harm, and but for which the harm would not have occurred. A proximate cause brings about, or helps to bring about, the injury, and it must have been necessary to the result.

DAMAGES

You may award damages only for injuries that Plaintiffs prove by a preponderance of the evidence were caused by Defendants' wrongful conduct.

Damages must be logically and reasonably related to the harm or injury for which compensation is being awarded. But as long as that connection exists, the law does not require certainty in the award of damages where a wrong has been proven and injury established.

Responsible estimates that lack mathematical certainty are permissible so long as you have a basis to make a responsible estimate of damages.

Damages may not be based on mere speculation or guesswork.

Damages are determined differently for some of Plaintiffs' claims. I will now give you instructions about how to determine damages that are particular to certain claims.

DAMAGES:
BREACH OF FIDUCIARY DUTY OF LOYALTY

Either or both Plaintiffs are entitled to damages for Defendant Randy Dzierzawski's breach of the fiduciary duty of loyalty (whether by failing to act in good faith or self-dealing) if Plaintiffs prove the elements of the claim I instructed you about earlier, and they prove either or both of the following:

- (1) either or both Plaintiffs suffered damages; and/or
- (2) Randy Dzierzawski profited as a result of his breach of fiduciary duty.

One potential form of damages for a breach of fiduciary duty claim is lost profits. If you find that Randy Dzierzawski's breach of fiduciary duty caused either or both Plaintiffs to lose profits, you may only award lost "net" profits. Lost "net" profits are computed by estimating the gross revenue either Plaintiff would have earned but for Defendants' wrongful act, minus "avoided costs." "Avoided costs" are those costs that would have been incurred in connection with the generation of the lost revenues but were not incurred.

Another potential form of damages for a breach of fiduciary duty claim is disgorgement, which is measured by the unjust enrichment either Defendant received from either Plaintiff.

DAMAGES:
UNFAIR COMPETITION

If either or both Plaintiffs prove the elements of the unfair competition I instructed you about earlier with respect to either or both Defendants, then that Plaintiff is entitled to the losses it sustained as a proximate result of the unfair competition. This means that a Plaintiff is entitled to the profits they would have received but for Defendants' conduct, as well as any expenses that the Plaintiff incurred because of Defendants' conduct.

Additionally, "exemplary damages" may be allowed if either or both Plaintiffs show that either or both Defendants committed Unfair Competition through fraud, with willful or reckless disregard of that Plaintiffs' rights, or with malicious intent. You may award Plaintiffs "exemplary damages" if you find that either or both Plaintiffs suffered a loss of reputation as a skillful and competent company, or other intangible injury that is not quantitative in monetary terms.

"Malicious intent" is not simply the doing of an unlawful or injurious act. It is a spirit of mischief or of criminal indifference to civil obligations.

NO AWARD WITHOUT LIABILITY

With regard to any particular claim, you may only consider damages if you first find liability. The order of questions in the verdict form is designed to ensure that you follow this instruction.

NO DOUBLE RECOVERY

Some of Plaintiffs' claims seek recovery for the same injury. If you find either Defendant liable for more than one of Plaintiffs' claims, you must not make duplicate damages awards for the same injury. In other words, Plaintiffs are entitled to only one recovery for each injury, even if the injury is a basis to find that Defendants are liable for more than one claim.

SELECTION OF PRESIDING JUROR; USE OF VERDICT FORM

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill it in and date it, and all of you will sign it.

COMMUNICATION WITH COURT

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

FINAL INSTRUCTION

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.